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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ADAM ELSON et al.,

Plaintiffs and
Appellants,

v.

WELLS FARGO BANK, as
Trustee, etc.,

Defendant;

STATE DEPARTMENT OF
HEALTH CARE
SERVICES,

Claimant and
Respondent.

B288796

(Los Angeles County
Super. Ct. No. 16STPB00230)

APPEAL from an order of the Superior Court of
Los Angeles County, Maria E. Stratton, Judge. Affirmed.

Barton Klugman & Oetting and Thomas Beltran for
Plaintiffs and Appellants.

No appearance by Defendant Wells Fargo Bank.

Xavier Becerra, Attorney General, Cheryl Feiner, Senior
Assistant Attorney General, Leslie P. McElroy, Supervising
Deputy Attorney General, Tara L. Newman, Deputy Attorney
General, for Respondent State Department of Health Care
Services.

Adam Elson and Christine Tobianski (Plaintiffs) appeal
from the probate court order denying their petition requesting
that the remainder of their deceased son's special needs trust be
distributed to them rather than to the Department of Health
Care Services (Department) as reimbursement for Medi-Cal
payments for their son's medical care. We recently addressed the
nearly identical issues in *Gonzalez v. City National Bank* (2019)
36 Cal.App.5th 734 (*Gonzalez*). As in *Gonzalez*, we conclude the
probate court properly found the Department was entitled to
reimbursement for these Medi-Cal expenses. Therefore, we
affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Special Needs Trust

Micah Elson (Micah or Beneficiary) suffered complications
at birth that left him severely and permanently brain damaged.
A medical malpractice lawsuit against the hospital and attending
physician led to a \$3.25 million settlement. On December 7,
2007, the Riverside County Superior Court ordered that
approximately \$2.38 million of the proceeds be placed in the

Micah Elson Special Needs Trust (the Trust) pursuant to Probate Code sections 3604 and 3605. An outstanding Medi-Cal lien in the amount of \$50,398.29 was paid out of those proceeds.

The Trust provides that the court had “made the following determinations: Micah Elson, a minor, has a disability in the nature of a severe and permanent brain injury that substantially impairs his ability to provide for his own care or custody and constitutes a substantial handicap; his condition appears to be permanent . . . ; he is likely to have special needs related to the disability described above that will not be met without this trust; and the monies to be paid to this trust do not exceed the amount that appears reasonably necessary to meet the special needs of the Beneficiary.”

The Trust provides that its “intent and purpose . . . is to provide a discretionary, spendthrift trust, to supplement public resources and benefits when such resources and benefits are unavailable or insufficient to provide for the Special Needs of the Beneficiary. . . . This is not a trust for the support of the Beneficiary. All payments made under this Trust must be reasonably necessary in providing for this Beneficiary’s special needs” The Trust further provides that “[t]he Beneficiary has no interest in the income or principal of the trust, other than as set forth herein,” and “because this trust is to be conserved and maintained for the Special Needs of the Beneficiary, no part of the principal or income of the trust shall be construed to be part of the Beneficiary’s ‘estate’” The Trust sets forth that “[f]or purposes of determining the Beneficiary’s Medi-Cal eligibility . . . no part of the principal or income of the trust estate shall be considered available to said Beneficiary.”

The Trust was set up to terminate upon Micah's death. It provides that "[n]otwithstanding any provisions of this instrument to the contrary, this trust is subject to the provisions and requirements of California Probate Code Sections 3604 and 3605, which require that notice of the Beneficiary's death or the trust termination be given . . . to . . . [the Department]." The Trust includes the following provision commonly referred to as a "payback" provision: Following payment for last illness, burial and administration expenses, "the remaining trust estate shall be subject to reimbursement under 42 U.S.C. § 1396p(d)(4)(a) or applicable state law to any state, or agency of a state, which has provided medical assistance to the Beneficiary under a state plan under Title XIX of the Social Security Act [(SSA)], up to an amount equal to the total medical assistance paid on behalf of the Beneficiary under such state plan. After such payment or payments have been made, the remaining trust estate shall be distributed to the person or persons . . . in such matter and proportions as shall be designated by the Beneficiary by written instrument"

Tracking the requirements of Probate Code section 3604, subdivision (b), the court's accompanying order provides: "Micah Elson, the minor, has a disability that substantially impairs his ability to provide for his own care or custody and constitutes a substantial handicap, namely severe and permanent brain injury. He is likely to have special needs that will not be met without the Trust proposed herein," and "[t]he money to be paid to the Trust does not exceed the amount that appears reasonably necessary to meet his special needs." The order reiterates that the Trust is established "under Probate Code §§ 3600 et seq., and all of its terms and provisions are approved." The order also provides that

the Trust would be subject to the superior court's continuing jurisdiction.

2. *The Department's Claim for Reimbursement from the Trust for Medi-Cal Payments*

Micah died on August 17, 2015, at age 10. The Department received notice of Micah's death on October 2, 2015 and, on October 15, 2015, filed a creditor's claim with the probate court. The creditor's claim sought reimbursement from the Trust for Medi-Cal payments for medical care for Micah in the amount of \$1,481,563.28. Thereafter, however, the Department clarified that it was seeking a reduced total of \$1,396,629.88, which consisted of medical services paid for Micah's benefit only after the Trust was established. As of October 31, 2015, Trust assets totaled \$1,534,714.55.

3. *Trustee's Petition Seeking Instructions Regarding Distribution of Trust Remainder*

On November 10, 2015, trustee Wells Fargo Bank (Trustee) filed a petition seeking (1) approval of the final account; (2) approval of its attorney fees; (3) termination of the Trust; and (4) instructions regarding final distribution of the Trust property. As relevant here, the petition stated the Trustee had received the Department's claim for reimbursement for Medi-Cal expenditures on behalf of Micah, and the Trustee requested instruction from the court as to "whether the [Department] is entitled to repayment of its liens, and if so, in what amount." The Trustee specifically requested "instruction regarding the effect of the decisions of the Court of Appeal" in *Shewry v. Arnold* (2004) 125 Cal.App.4th 186 (*Shewry*) and *Herting v. State Dept. of Health Care Services* (2015) 235 Cal.App.4th 607 (*Herting*). "Notwithstanding the apparently unconditional right of the

[Department] to recover from the Trust the cost of the medical assistance it provided to the beneficiary” and the decision in *Herting* supporting the Department’s right of recovery, the Trustee noted that the Department’s right to reimbursement was less clear under the reasoning of the *Shewry* decision.

On February 19, 2016, the Department filed its opposition to the Trustee’s petition, arguing that the Trustee was obligated to pay the Department’s claim pursuant to federal and state law and the terms of the Trust instrument.

4. *Plaintiffs’ Petition Seeking Distribution of Trust
Remainder to Them*

On May 10, 2016, before the hearing on the Trustee’s petition, Plaintiffs filed their own petition pursuant to Probate Code sections 850 and 17200¹ seeking an order directing the Trustee to deliver the remaining Trust assets to Plaintiffs as Micah’s heirs. Relying on Welfare and Institutions Code former section 14009.5, subdivision (b)(2)(c),² which sets forth the

¹ Probate Code section 850, subdivision (a)(3)(A), authorizes “any interested person” to file a petition seeking a court order “[w]here the trustee is in possession of, or holds title to, . . . personal property, and the property, or some interest, is claimed to belong to another.” Probate Code section 17200, subdivision (b)(4), authorizes a trustee or a beneficiary of a trust to petition the court to “[a]scertain[] beneficiaries and determin[e] to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument.”

² References in our opinion to Welfare and Institutions Code former section 14009.5 are to the text of that statute as amended effective October 4, 1995. (Stats. 1995, ch. 548, § 2, pp. 4248-4249.)

Department's right to reimbursement for Medi-Cal payments from deceased beneficiaries' estates, Plaintiffs argued that, because Micah received the Medi-Cal services when he was under 55 years old, the Department had no right to recovery from the Trust remainder for those expenditures.

The Department opposed the petition, contending federal and state law, as well as the Trust's express provisions, mandated it be reimbursed from the Trust for Micah's Medi-Cal expenses. The Department asserted that Welfare and Institutions Code former section 14009.5 did not apply to limit the Department's recovery.

The proceedings involving Plaintiffs' petition (case number 16STPB00230) ultimately were consolidated with the proceedings on the Trustee's petition (case number BP108936). After a number of continuances, a final hearing on both petitions was held on December 26, 2017, with the court issuing its ruling on January 11, 2018.

The court denied Plaintiffs' petition seeking an order directing the Trustee to distribute the Trust assets to them. The court's minute order in case number 16STPB00230 states that "[p]etitioners and [the Department] are directed to follow the court's orders in BP108936 with respect to payment of the [Department's] claim. The trustee has been ordered in that case to pay the claim, subject to its determination that Medi-Cal paid for medical care actually rendered to Micah during the period of December 7, 2007 through August 15, 2015."

The record compiled by Plaintiffs does not include the referenced orders from case number BP108936, but on our own motion we have taken judicial notice of the orders in that case. In pertinent part, the January 11, 2018 minute order in case

number BP108936 reflects the court’s finding that *Herting* is “directly on point” and supports the court’s determination that the Trustee should be instructed to pay the Department’s claim for \$1,396,629.88 for medical services rendered, provided the Trustee determines the billed services were in fact provided to Micah. The court found *Shewry* was “inapposite to the facts and circumstances of this special needs trust.”³ The court ordered the assets remaining after payment of the Department’s claim to be distributed to Plaintiffs. In a subsequent signed order of which we have also taken judicial notice, the court reiterated its earlier findings.

Plaintiffs timely filed a notice of appeal from the January 11, 2018 minute order in case number 16STPB00230.⁴

DISCUSSION

I. *Standard of Review*

“[I]n reviewing a trial court’s interpretation of a statute, we apply a de novo, or independent, standard of review. [Citation.]

³ In *Gonzalez*, we set forth in detail the contrasting reasoning of the *Shewry* and *Herting* opinions. (See *Gonzalez*, *supra*, 36 Cal.App.5th at pp. 749-754.)

⁴ Probate Code section 1300, subdivision (k), authorizes an appeal from an order “[a]djudging the merits of a claim made under . . . [Probate Code] Section 850,” while Probate Code section 1304, subdivision (a), authorizes an appeal from a final order under Probate Code section 17200. Because the January 11, 2018 ruling reflected in the court’s minutes required no further orders to secure its efficacy, it constitutes a final determination and is appealable, notwithstanding the subsequent order entered in the consolidated matter. (See *Conservatorship of Starr* (1989) 215 Cal.App.3d 1390, 1393-1394.)

In independently interpreting a statute, our task is to ascertain and effectuate the law’s intended purpose. [Citation.] In interpreting a statute, we look first to the statute’s words. [Citation.] The statutory language is generally the most reliable indicator of legislative intent. [Citations.] If the statutory language is unambiguous, we will presume the Legislature meant what it said and the plain meaning of the statute will prevail unless its literal meaning would result in absurd consequences that the Legislature did not intend. [Citations.] [¶] However, if the statutory language is ambiguous and is reasonably susceptible to more than one meaning, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part. [Citation.] Our ultimate objective in interpreting a statute is to construe the statute in a way that most closely comports with the apparent intent of the Legislature.” (*People v. LaDuke* (2018) 30 Cal.App.5th 95, 100.)

“““[W]e consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.””” (*Hassell v. Bird* (2018) 5 Cal.5th 522, 540.) “We examine the statutes . . . with other legislation on the same subject. [Citation.] If they conflict on a central element, we strive to harmonize them so as to give effect to each.” (*Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310.)

II. *Statutory Overview*

A. *Medicaid and Medi-Cal*

Medicaid provides joint federal and state funding of medical care for individuals, including “severely impaired” persons, who cannot afford to pay their own medical costs. (*Gonzalez, supra*, 36 Cal.App.5th at p. 743; *Arkansas Dept. of Health & Human Services v. Ahlborn* (2006) 547 U.S. 268, 275 [126 S.Ct. 1752; 164 L.Ed.2d 459] (*Ahlborn*).) Under the Medicaid program (Title XIX of the SSA, codified at 42 U.S.C. § 1396 et seq.),⁵ the federal government pays between 50 percent and 83 percent of the costs incurred by the state for patient care; the state pays the remainder of the costs and complies with federal statutory requirements for “making eligibility determinations, collecting and maintaining information, and administering the program.” (*Gonzalez*, at p. 743; see *Ahlborn, supra*, 547 U.S. at p. 275.) “[A]s a participant in the federal Medicaid program, the State of California has agreed to abide by certain requirements imposed by federal law.” (*Gonzalez*, at p. 743; see *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 804 (*Olszewski*).) California has implemented the federal Medicaid program through Medi-Cal, codified at Welfare and Institutions Code sections 14000-14198, with the Department designated as the agency responsible for administering the Medi-Cal program. (*Gonzalez*, at p. 743.)

⁵ All further undesignated statutory references are to title 42 of the United States Code.

*B. Treatment of Special Needs Trusts Under
Medicaid/Medi-Cal*

“A special needs trust is used to set aside assets to pay for the special medical needs of a severely disabled beneficiary” that are not covered by Medicaid. (*Gonzalez, supra*, 36 Cal.App.5th at p. 743.) In the Omnibus Budget Reconciliation Act of 1993 (OBRA) that revised the Medicaid system (Pub.L. No. 103-66 (Aug. 10, 1993) 107 Stat. 312), Congress established a general rule that trust assets would be counted for purposes of determining Medicaid eligibility, but exempted qualifying special needs trusts from this general rule, with some conditions. (§ 1396p(d)(1),(3),(4); see *Gonzalez*, at p. 744; *Herting, supra*, 235 Cal.App.4th at p. 612.) As relevant here, section 1396p(d)(4)(A) provides that in determining eligibility for Medicaid, states should *not* consider the assets in a trust established for “an individual under age 65 who is disabled . . . and which is established for the benefit of such individual by the individual, a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this title.” (§ 1396p(d)(4)(A).) “Therefore, so long as the state will recover for the Medicaid services provided to the special needs trust beneficiary during her lifetime, the beneficiary remains eligible for such services, even if the amount in the trust otherwise would disqualify the beneficiary from receiving such benefits.” (*Gonzalez*, at p. 744; see *Herting*, at p. 610 [special needs trusts “enable a disabled person to qualify for Medi-Cal benefits by

sheltering money that exceeds the limit of the individual's eligibility"].)

“Federal law requires that ‘[a] State plan for medical assistance [¶] . . . [¶] comply with the provisions of section 1396p of this title with respect to liens, adjustments and recoveries of medical assistance correctly paid, transfers of assets, and treatment of certain trusts.’” (*Gonzalez, supra*, 36 Cal.App.5th at p. 745, quoting § 1396a(a)(18); see *Citizens Action League v. Kizer* (9th Cir. 1989) 887 F.2d 1003, 1005.) “Thus, the requirements of section 1396p(d) govern whether trust assets are properly considered in determining a trust beneficiary’s eligibility for Medi-Cal.” (*Gonzalez*, at p. 745; Welf. & Inst. Code, § 14006, subd. (c).) California Code of Regulations, title 22, section 50489.9 also provides that “for a qualifying special needs trust to be considered ‘not available’ when determining Medi-Cal eligibility, the trust must be set up so that ‘[t]he State receives all remaining funds in the trust, or respective portion of the trust, upon the death of the individual or spouse or upon termination of the trust up to an amount equal to the total medical assistance paid on behalf of that individual by the Medi-Cal program.’” (*Gonzalez*, at p. 745, quoting Cal. Code Regs., tit. 22, § 50489.9, subds. (b)(2), (a)(3)(C).)

“Sections 3604 and 3605 of the Probate Code, enacted in 1992 and effective as of January 1, 1993, govern special needs trusts established by a court after it approves a monetary settlement or enters a judgment that includes monetary damages for a minor or a person with a disability.” (*Gonzalez, supra*, 36 Cal.App.5th at p. 745.) “[W]hen a court approves a settlement of an action to which an incompetent person is a party, the conservator may petition the court for an order that money owed

to the incompetent person pursuant to the settlement not become part of the conservatorship estate, but instead be paid to a special needs trust established under Probate Code section 3604.”

(*Ibid.*)

“Pursuant to Probate Code section 3604, ‘[a] special needs trust may be established and continued under this section only if the court determines all of the following: [¶] (1) That the minor or person with a disability has a disability that substantially impairs the individual’s ability to provide for the individual’s own care or custody and constitutes a substantial handicap. [¶] (2) That the minor or person with a disability is likely to have special needs that will not be met without the trust. [¶] (3) That money to be paid to the trust does not exceed the amount that appears reasonably necessary to meet the special needs of the minor or person with a disability.’” (*Gonzalez, supra*, 36 Cal.App.5th at pp. 745-746, quoting Prob. Code, § 3604, subd. (b).) “Probate Code section 3605 provides that ‘[n]otwithstanding any provision in the trust instrument, at the death of the special needs trust beneficiary or on termination of the trust, the trust property is subject to claims of the [Department], the State Department of State Hospitals, the State Department of Developmental Services, and any county or city and county in this state *to the extent authorized by law as if the trust property is owned by the beneficiary or is part of the beneficiary’s estate.*’ (Prob. Code, § 3605, subd. (b), italics added.) [¶] The California Law Revision Commission Comment to Probate Code section 3605 states in part, ‘On the death of the special needs trust beneficiary or on termination of the trust, trust property may become subject to reimbursement claims under federal or state law. See, e.g., 42 U.S.C. § 1396p(b)(1)(B)

(Medicaid); Welf. & Inst. Code § . . . 14009.5 (Medi-Cal) For this purpose and only this purpose, the trust property is treated as the beneficiary's property or as property of the beneficiary's estate.' (Cal. Law Revision Com. com., 52B West's Ann. Prob. Code (2009 ed.) foll. § 3605, p. 154.)" (*Gonzalez*, at p. 746.)

C. *Estate Recovery Provisions of Medicaid and Medi-Cal*

"As part of the OBRA, 'Congress enabled states to recover the costs for medical services from the estate of the former recipient. (42 U.S.C. § 1396p(b)(1)(B).)' [Citation.] 'In compliance with federal law, state law . . . requires the [Department] to seek reimbursement from the deceased recipient's estate . . . , ' except in certain enumerated circumstances.'" (*Gonzalez, supra*, 36 Cal.App.5th at pp. 746-747, fns. omitted.)

"Whereas subdivision (d) of section 1396p concerns the treatment of trust assets, subdivision (b) of section 1396p sets forth the circumstances in which a state must or must not seek reimbursement from the estate of a deceased recipient of Medicaid services. As relevant here, section 1396p(b) provides: '(1) No adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made, except that the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals: [¶] . . . [¶] (B) In the case of an individual who was 55 years of age or older when the individual received such medical assistance, the State shall seek adjustment or recovery from the individual's estate' (§ 1396p(b)(1)(B).) [¶] Tracking these federal requirements, Welfare and Institutions Code former section 14009.5 generally prohibited the Department from

seeking reimbursement for Medi-Cal expenditures from the estate of a decedent who was under age 55 when services were received. (Welf. & Inst. Code, former § 14009.5, subds. (a), (b).)” (*Gonzalez, supra*, 36 Cal.App.5th at p. 747, fn. omitted.)

III. *The Department Has a Right To Reimbursement from the Trust’s Remaining Assets*

Plaintiffs contend the Department has no right to reimbursement from the Trust remainder for Medi-Cal payments for medical services provided to Micah. Because Probate Code section 3605 directs that special needs trust remainders be treated as part of the beneficiary’s estate, Plaintiffs assert that the Department’s right to reimbursement is governed by Welfare and Institutions Code former section 14009.5, which does not permit reimbursement from a deceased beneficiary’s estate for Medi-Cal services provided when the beneficiary was under age 55. The Department contends Welfare and Institutions Code former section 14009.5 is inapplicable and the Department has a right to reimbursement from the Trust pursuant to section 1396p(d)(4)(A) and California Code of Regulations, title 22, section 50489.9 as well as the Trust instrument itself.

We addressed these same contentions in *Gonzalez, supra*, 36 Cal.App.5th 734, in which the parents and legal heirs of a deceased beneficiary of a special needs trust established under Probate Code sections 3604 and 3605 appealed from an order denying their request that the trust remainder be distributed to them as opposed to the Department as reimbursement for Medi-Cal payments for medical services for the beneficiary. As here, because the beneficiary was under age 55 when she received the services, her parents argued that the Department had no right to reimbursement pursuant to Welfare and Institutions Code former

section 14009.5. (*Gonzalez*, at p. 742.) We rejected this argument and concluded the Department was entitled to reimbursement for the Medi-Cal expenses incurred on behalf of the beneficiary, notwithstanding her age. (*Id.* at p. 764.)

We held that “[t]he quid pro quo for not considering assets in a special needs trust for Medi-Cal eligibility purposes is that any assets remaining in such a trust at the death of the beneficiary must be used to reimburse the state for its Medi-Cal expenses on behalf of the beneficiary.” (*Gonzalez, supra*, 36 Cal.App.5th at p. 759.) We determined that “section 1396p(d)(4)(A) mandates that the Department seek recovery of the total medical assistance paid for by Medi-Cal on behalf of the beneficiary of a special needs trust.”⁶ (*Gonzalez*, at p. 755.) Further, “California law explicitly acknowledges that, for the purpose of determining eligibility for Medi-Cal, federal Medicaid standards apply. . . . [¶] California regulations reflect that in order for assets in a special needs trust not to be counted in determining if the beneficiary is eligible for Medi-Cal, the trust must include a mandatory payback provision (like the one in the Trust) stating that at the death of the beneficiary the state will be reimbursed from the trust remainder for the Medi-Cal expenses incurred. (Cal. Code Regs., tit. 22, § 50489.9, subds. (b)(2), (a)(3)(C)) And Probate Code section 3605 provides that, at the death of the beneficiary, the property of a

⁶ In so holding, we agreed with the reasoning of *Herting, supra*, 235 Cal.App.4th at pages 614-615, and we noted our disagreement with the court’s determination in *Shewry, supra*, 125 Cal.App.4th at page 197, that section 1396p(d)(4)(A) sets forth only eligibility requirements, not reimbursement rules. (See *Gonzalez, supra*, 36 Cal.App.5th at p. 755 & fn. 8.)

special needs trust is subject to claims of the Department and other state agencies. (Prob. Code, § 3605, subd. (b).)” (*Gonzalez*, at pp. 755-756.) We thus held that the Department was permitted to recover Medi-Cal expenses from a special needs trust remainder, notwithstanding the age of the beneficiary at the time he or she received the Med-Cal services. (*Ibid.*)

We rejected the plaintiffs’ contention in *Gonzalez* (also made by Plaintiffs here) that the Department’s right to reimbursement was qualified by additional language in Probate Code section 3605, subdivision (b), and the accompanying Law Revision Commission comment, providing that the trust property is subject to agencies’ claims “to the extent authorized by law as if the trust property is owned by the beneficiary or is part of the beneficiary’s estate.” (Prob. Code, § 3605, subd. (b); see Cal. Law Revision Com. com., 52B West’s Ann. Prob. Code, *supra*, foll. § 3605, p. 154.) We disagreed with the plaintiffs’ interpretation that Probate Code section 3605 incorporated Welfare and Institutions Code former section 14009.5, subdivision (b)(1), which generally bars the Department from claiming against an estate where the beneficiary was under age 55 when he or she received the Medi-Cal services. (*Gonzalez, supra*, 36 Cal.App.5th at pp. 756, 759.) “Although Probate Code section 3605 provides that trust remainders should be treated as part of a beneficiary’s estate, it does not explicitly cross-reference the estate recovery provisions of Welfare and Institutions Code former section 14009.5, except in the Law Revision Commission comment. Nothing in the legislative history explains the meaning behind the reference to treating remaining trust assets as part of a beneficiary’s estate, or otherwise reflects any intention to afford the states less than full reimbursement for

their Medi-Cal expenditures on behalf of deceased beneficiaries of special needs trusts.” (*Gonzalez*, at p. 759.)

Further, we held that construing Probate Code section 3605 to require anything less than full reimbursement for the Department would lead it to be “in conflict with, and therefore preempted by, 42 United States Code section 1396p(d)(4)(A).” (*Gonzalez*, *supra*, 36 Cal.App.5th at p. 759.) We rejected the plaintiffs’ argument (also made in the instant case) that despite the mandatory federal reimbursement provision of section 1396p(d)(4)(A), the State of California has “latitude” to implement its Medi-Cal plan in a manner that does not afford the Department a right of reimbursement from all qualifying special needs trusts created under Probate Code sections 3604 and 3605. (*Gonzalez*, at pp. 756-757.) Rather, we concluded, “Congress has made plain that special needs trust assets will only be exempt for purposes of Medicaid eligibility if they will be subject to full reimbursement to the state upon the beneficiary’s death, and our state has acknowledged the supremacy of federal law on such eligibility and reimbursement issues.” (*Gonzalez*, at p. 760.) Because Congress exhibited its specific intention to precisely regulate reimbursements for Medicaid expenditures from special needs trusts, any state law that varied from the proscribed reimbursement scheme would be preempted. (*Id.* at p. 759.) Thus, we refused to interpret section 1396p(d)(4)(A) as permitting a qualification that the Department be reimbursed only for services provided to a beneficiary over the age of 55. (*Gonzalez*, at p. 759.)

In *Gonzalez*, we also rejected the argument made again by Plaintiffs here that special needs trusts established under Probate Code sections 3604 and 3605 are a distinct subset of

special needs trusts that do not fall within the standards set forth in section 1396p(d). Like the plaintiffs in *Gonzalez*, Plaintiffs fail to articulate how or why the purported distinctions between federal and state standards that they have identified—such as the stricter definition of a “disability” under Probate Code section 3604, subdivision (b)(1), than under section 1396p(d)(4)(A)—compel the conclusion that the estate recovery rules of section 1396p(b) and Welfare and Institutions Code former section 14009.5 should apply to trusts established under Probate Code sections 3604 and 3605, as opposed to the special needs trust recovery standards under section 1396p(d) and California Code of Regulations, title 22, section 50489.9. (See *Gonzalez, supra*, 36 Cal.App.5th at p. 759, fn. 12.)

As in *Gonzalez*, we find persuasive, and afford some deference to, the January 6, 2015 letter by the Centers for Medicare & Medicaid Services (CMS)⁷ that the Department relies upon in this case.⁸ (*Gonzalez, supra*, 36 Cal.App.5th at pp. 760-762; see *Olszewski, supra*, 30 Cal.4th at p. 821 [policy clarification letter from HCFA regarding conflict between state

⁷ Congress delegated the administration of the Medicaid Act to the Secretary of Health and Human Services, who in turn exercises his or her broad authority through the CMS, previously known as the Health Care Financing Administration (HCFA). (*Gonzalez, supra*, 36 Cal.App.5th at p.760.)

⁸ As in *Gonzalez*, we deny Plaintiffs’ request for judicial notice of a number of “All County Welfare Director Letters” issued by the Department, as well as pages on the Department and SSA websites. “The materials have, at best, marginal relevance to the issues before us, and in any event, Plaintiffs did not submit them to the trial court.” (*Gonzalez, supra*, 36 Cal.App.5th at p. 760, fn. 13.)

law and federal Medicaid provisions was entitled to deference].) That letter addresses the interplay between the estate recovery provision in section 1396p(b) and the trust provisions of section 1396p(d)(4). It confirms that “[a] state’s entitlement to reimbursement from trusts described in [section 1396p(d)(4)] exists independent of the estate recovery authority in [section 1396p(b)],” and “[t]he mandatory reimbursement terms in a [section 1396p(d)(4)] trust, and not the provisions of [section 1396p(b)], provide the basis for a state’s reimbursement rights from such trusts.” The letter further states that “[t]he statutory language does not limit the states’ right to reimbursement from [section 1396p(d)(4)] trusts . . . nor does it condition the right upon the age of a trust beneficiary or absence of surviving family members, or otherwise make the states’ reimbursement rights subject to [section 1396p(b)]. No limitation on a state’s entitlement to reimbursement from [section 1396p(d)(4)] trusts may be imposed other than what is expressly contained in the statute.” The CMS letter thus supports our conclusion that the Department has a right to reimbursement from the Trust, notwithstanding Micah’s age when the Medi-Cal services were provided to him.

As we discussed in *Gonzalez*, public policy considerations also weigh in favor of our interpretation. In *Gonzalez*, we cited the well-established principle that “[a]llowing states to recover from the estates of persons who previously received assistance furthers the broad purpose of providing for the medical care of the needy; the greater amount recovered by the state allows the state to have more funds to provide future services. Furthermore, if a person has assets available to pay for the benefits, then the state should be allowed to recover from those

assets because that person was not fully entitled to all benefits.” (*Gonzalez, supra*, 36 Cal.App.5th at p. 762.) “Where [as here] a third party has been found liable for the beneficiary’s injuries resulting in long-term medical costs, proceeds provided by the third party fairly should go towards these medical costs; only if the medical expenses prove lower than reasonably expected should those funds be distributed to the beneficiary’s heirs upon the death of the beneficiary.” (*Ibid.*) “It comports with principles of fairness to allow the Department to partially recover the healthcare payments for [Micah], so that those funds can be expended on behalf of other Medi-Cal recipients.” (*Id.* at p. 763.)

Finally, as in *Gonzalez*, “[o]ur conclusion that the Department is entitled to be reimbursed from the Trust residual is further supported by the directives of the Trust itself.” (*Gonzalez, supra*, 36 Cal.App.5th at p. 763.) The language of Micah’s Trust is very similar to the language of the Trust at issue in *Gonzalez*. Micah’s Trust provides that “[t]he Beneficiary has no interest in the income or principal of the trust, other than as set forth herein,” and “because this trust is to be conserved and maintained for the Special Needs of the Beneficiary, no part of the principal or income of the trust shall be construed to be part of the Beneficiary’s ‘estate.’” So that it would qualify as a special needs trust exempted from consideration for determining Medi-Cal eligibility, the Trust provides that following payment for last illness, burial and administration expenses, “the remaining trust estate shall be subject to reimbursement under 42 U.S.C. § 1396p(d)(4)(a) or applicable state law to any state, or agency of a state, which has provided medical assistance to the Beneficiary under a state plan under Title XIX of the Social Security Act [(SSA)], up to an amount equal to the total medical assistance

paid on behalf of the Beneficiary under such state plan.” Only after such payments have been made would any remaining trust estate be distributed to the Beneficiary’s legal heirs.

As we held in *Gonzalez*, “The Trust could not be clearer in setting forth that none of the assets in the Trust were to be treated as part of [Micah’s] estate; rather, at [Micah’s] death, the state was entitled to full reimbursement for Medi-Cal assistance provided during [his] life.” (*Gonzalez, supra*, 36 Cal.App.5th at pp. 763-764.) “We reject Plaintiffs’ contention that the Trust’s explicit payback provision is ‘eviscerated’ by the subsequent provision in the Trust that ‘[n]otwithstanding any provisions of this instrument to the contrary, this trust is subject to the provisions and requirements of California Probate Code Sections 3604 and 3605, which require that notice of the Beneficiary’s death or the trust termination be given . . . to . . . [the Department].’ As discussed above, we do not agree with Plaintiffs that Probate Code section 3605 prohibits reimbursement from the Trust because [Micah] was under 55. We conclude that the Trust directives are in accord with the applicable laws giving the Department the right to reimbursement for its Medi-Cal expenses incurred on behalf of [Micah].” (*Gonzalez*, at p. 764.)

DISPOSITION

The probate court's order is affirmed. The Department shall recover its costs on appeal.

STONE, J.*

We concur:

PERLUSS, P. J.

FEUER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.